

COVENANT AND AGREEMENT

This Covenant and Agreement ("Covenant"), is made as of this _____ day of ___, 2010 by AIG Retirement Services Inc., a Delaware corporation ("Covenanter"), who is the owner of a property located in Phoenix, Maricopa County, Arizona, described in Exhibit A, which is attached hereto and incorporated by this reference ("the Property") and by the United States Environmental Protection Agency (EPA) with reference to the following:

A portion of the Property described in Exhibit B ("the Excavation Sensitive Area"), attached hereto and incorporated by this reference, contains soil contaminated with polychlorinated biphenyls (PCBs). The contaminated soil is located approximately nineteen (19) feet or lower below existing grade (or at an approximate elevation of 1130 ft above mean sea level) and has been covered by a minimum of 12 inches of clean engineered soil or other materials that meet the requirements of 40 CFR § 761.61(b)(1)(ii) through (b)(1)(v) (hereinafter called the "CAP"). Along the west side of the CAP, a one foot wide cutoff wall was constructed to a depth of 10 feet below the ground surface (hereinafter called the "Barrier"). The Barrier was constructed of sand slurry mixed with 90 pounds of cement per cubic yard of slurry. The Barrier was constructed to alert future potential construction workers for a potential underground retention basin west of the CAP that they were approaching the CAP and to cease any further excavation to the east. The Covenanter and the EPA desire and intend that in order to protect the present and future public health and safety, the Excavation Sensitive Area shall be used in such a manner as to avoid harm to persons or property which may result from exposure to PCBs which are present at a depth of nineteen (19) feet or lower in the Excavation Sensitive Area.

Article I

Statement of Facts

1.1. Description of Contamination

The Property is also referred to as Lot 3 of the Washington Park Corporate Center, 4400 Block of Washington Street, Phoenix, Arizona. The Washington Park Corporate Center was assembled from a multitude of parcels formerly containing different uses. The east half of Lot 3 was occupied by the National Electric Coil (NEC) facility at 4444 East Washington Street. NEC was the focus of a Toxic Substance Control Act (TSCA) remediation project in the mid-1980s, when PCBs were remediated to a target level of 25 parts per million (ppm).

From November 2007 to May 2008, PCB clean-up was implemented on Lot 3 according to a PCB remediation notice previously submitted to the EPA. Based upon the results of composite grid sampling, three grids (each grid approximately 14.8 by 14.8 ft) contained PCB concentrations above the remedial objective of less than or equal to 1 ppm for High Occupancy Areas. The excavation at those three grid areas reached a depth of 19 feet below the original ground surface and the PCB concentrations as measured in the verification samples at that depth were reported at 1.2, 4.1, and 6.8 milligrams per kilogram (mg/kg – i.e., ppm).

Subsequent to the above verification sampling, 9 test borings were drilled at and around the three grid locations to depths of 40 feet below the ground surface (bgs). Soil samples obtained from each of the test borings at selected depths were tested for PCBs. The results of the testing indicated 4 soil samples at depths ranging from 25 to 35 feet bgs contained PCBs at concentrations of 1.3, 1.4, 1.6, and 2.9 mg/kg. None of the other samples tested contained PCBs at concentrations of 1 mg/kg or higher.

1.2 Health Effects

PCB-impacted soils remain within the Excavation Sensitive Area at depths below 19 feet bgs. In the event that an excavation is conducted in the Excavation Sensitive Area below a depth of 19 feet bgs, then there is a potential exposure pathway either through inhalation, ingestion and dermal absorption. EPA has found evidence that PCBs have a significant toxic effect in animals, including effects on the immune system, the reproductive system, the nervous system and the endocrine system. The EPA and several other national health organizations have determined that PCBs are probable human carcinogens.

1.3 Surrounding Land Use

The Property is located within the Washington Park Corporate Park Center, a multi-use planned development. The Property is currently a vacant graded lot with no structures or occupants. An office building followed by Van Buren Street is to the north. A second office building followed by State Route 143 is to the east. A vacant lot and a 5-story hotel building followed by Washington Street is to the south. Graded land and a restaurant followed by 44th Street are to the west. The nearest residential area is located approximately 1,500 feet northeast of the property. Balsz School District No. 31 is located approximately 4,500 feet north-northwest of the property.

Article II

General Provisions

2.1 Provisions to Run With the Land

This covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as the "Restrictions"), subject to which the Excavation Sensitive Area and every portion thereof shall be improved, held used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and all of the restrictions shall run with the land, and pass with each and every portion of the Excavation Sensitive Area, and shall apply to, inure to the benefit of, and bind the Owners (as hereafter defined). Each and all of the Restrictions are for the benefit of and enforceable by EPA.

2.2 Concurrence of Owners Presumed

All purchases (as hereafter defined) or possessors of any portion of the Excavation Sensitive Area shall be deemed by their purchase or possession of their applicable portion of the Excavation Sensitive Area to agree for and among themselves, their

heirs, successors, assignees, and agents that the Excavation Sensitive Area as herein established must be adhered to for the benefit of future Owners and that their respective interests in the Excavation Sensitive Area shall be subject to the Restrictions contained herein.

2.3 Incorporation into Deeds

Covenanter desires and covenants that the Restrictions set out herein shall be incorporated by reference in each and all future deeds of any portion of the Excavation Sensitive Area.

Article III

Definitions

3.1 EPA. "EPA" shall mean the United States Environmental Protection Agency.

3.2 Improvements.

"Improvements" shall mean all buildings, roads, driveways, regrading, utilities, and paved parking area, constructed or placed upon any portion of the Excavation Sensitive Area, but shall not include any interior building improvements.

3.3 Owner(s).

Owner(s) shall mean Covenanter or its successors in interest, including Covenanter's heirs and assigns, who hold title to all or any portion of the Excavation Sensitive Area.

Article IV

Development, Use, and Conveyance of the Property

4.1 Restriction on Development and Use.

Covenanter promise to restrict the use of the Excavation Sensitive Area (as defined on Exhibit B) as follows:

- a. The Excavation Sensitive Area will be posted with a bilingual sign in English and Spanish during the cap implementation process, stating that no grading, excavation, or building activities penetrating the full thickness of the CAP can occur without the written notification to the EPA.
- b. No Owner of the Excavation Sensitive Area or any portion thereof shall permit or allow any alteration to the CAP that is not already stipulated in the operation and maintenance plan for the CAP without the written notification to the EPA.
- c. No Owner of the Excavation Sensitive Area or any portion thereof shall permit or allow any excavation in this area without written notification to the EPA.

- d. Notwithstanding the occupancy and use of Improvements overlying the Excavation Sensitive Area including the use of hazardous materials, the Owner shall not conduct any activities within the Excavation Sensitive Area which would cause a potential threat to public health and safety.
- e. The Owner(s) grants the EPA access to the Excavation Sensitive Area for inspections, surveillance, monitoring, maintenance, and other activities consistent with the purposes of this Covenant as deemed necessary by the EPA in order to protect the public health and safety.

4.2 Conveyance of the Excavation Sensitive Area.

An Owner shall provide a notice to the EPA no later than 30 days after closing of any sale by the Owner of its portion of the Excavation Sensitive Area or its interest in the Excavation Sensitive Area to a third person. The EPA shall not by reason of this Covenant, have authority to approve, disapprove, or otherwise affect any sale of the Excavation Sensitive Area except as otherwise provided by law, or by administrative order.

4.3 Enforcement.

Failure of an Owner to comply with any of the Restrictions, set forth in Section 4.1 shall be grounds for the EPA, by reason of this Covenant, to require that the then Owner that failed to comply with the Restrictions comply with this Covenant.

4.4 Notice in Agreements

Each Owner shall execute a written instrument which shall accompany all purchase agreements relating to its portion of the Excavation Sensitive Area entered into by the Owner. The instrument shall contain the following statement:

"The land described herein contains PCB's within a portion of the property known as the Excavation Sensitive Area at depths of nineteen (19) feet below site grade or lower (or at an approximate elevation of 1130 ft above mean sea level). Such conditions renders the land and owner of the land subject to requirements, restrictions, provisions and liabilities contained in 40 CFR § 264.310 as made applicable to this Property by a specific Covenant of Deed Restriction, a copy of which is attached hereto and incorporated herein by reference. The statement is not a declaration that a hazard exists and does not address the liability of any party."

Article V

Variance and Termination

5.1 Variance.

Any Owner may apply to the EPA for a written variance for the provisions of this Covenant. Such application shall be made in accordance with 40 CFR § 761.61, or its successor statutes.

5.2 Termination.

Any Owner may apply to the EPA for a termination of all or any portion of the Restrictions as they apply to all or any portion of the Excavation Sensitive Area as to which the party is an Owner. Such application shall be made in accordance with 40 CFR § 761.61 or its successor statutes.

5.3 Term.

Unless otherwise modified or terminated in accordance with Sections 5.1 or 5.2 above , by law or otherwise, this Covenant shall continue in effect in perpetuity.

Article VI

CAP Maintenance Plan

6.1 General

The Excavation Sensitive Area has an engineered CAP at or within 24 inches of the ground surface. The CAP was constructed with clean soil or other materials that meet the requirements of 40 CFR 761.61(b)(1)(ii) through (b)(1)(v). The Restrictions in this Covenant do not allow any alteration to the CAP without the written approval of EPA.

Along the west side of the CAP, a one foot wide cutoff wall was constructed to a depth of 10 feet below the ground surface. The Barrier was constructed of sand slurry mixed with 90 pounds of cement per cubic yard of slurry. The Barrier was constructed to alert future potential construction workers for a potential underground retention basin west of the CAP that they were approaching the CAP and to cease any further excavation to the east. Any Owner of the Property that will be conducting any development off of the Excavation Sensitive Area, but on the Property, must notify all contractors of the existence of the CAP and Barrier and of the Restrictions associated with this Covenant.

Any Owner of the Excavation Sensitive Area or any part thereof that will be conducting any development on or over the Excavation Sensitive Area, must notify all contractors of the existence of the CAP and Barrier and of the Restrictions associated with this Covenant.

6.2 Maintenance of the CAP

The Property including the Excavation Sensitive Area is currently vacant, graded, undeveloped land with no structures or development and no Occupants. While it remains undeveloped land, the Owner shall maintain the CAP in its current condition. From time to time, but at least annually, the Owner shall conduct an inspection of the CAP to observe if it has been altered in any way that would cause the CAP to not perform as intended. If the inspection reveals any indications that the CAP has been compromised, altered, or affected in any way that would affect its performance, the Owner must repair the CAP to its original condition. The repair to the CAP should be completed using clean soil or other materials that meet the requirements of 40 CFR 761.61(b)(1)(ii) through (b)(1)(v) and compacted to a minimum of 95 percent of the standard proctor density. Annually, the Owner will inspect the cap and submit a repair

report (in case this repair is necessary), including: the date of any repairs conducted on the CAP during the year, and the reason for the repair to the CAP. After any future development of the CAP, the annual inspection and the letter to EPA will still remain in effect in perpetuity.

6.3 Development on the CAP

Current development plans for the Property include the potential construction of an upscale residential apartment complex. In any potential landscaped areas the minimum 12 inch thickness of the CAP must be maintained. If finished grades require that any portion of the CAP be lowered and the cap thickness be reduced to less than 12 inch thickness, the entire CAP will need to be removed from that area and completely replaced at the lower elevation. All utility line cuts through the CAP must be backfilled and compacted with clean soil or other materials that meet the requirements of 40 CFR 761.61(b)(1)(ii) through (b)(1)(v) and compacted to a minimum of 95 percent of the standard proctor density. Any asphalt or concrete placed on the CAP will become a part of the CAP with respect to future maintenance and inspection of the CAP. If none of the existing soil CAP is removed prior to placement of the asphalt or concrete, then there is no minimum thickness requirement for the asphalt or concrete. If any portion of the CAP is removed in order to place the asphalt or concrete, then the minimum thickness of the asphalt or concrete will be 6 inches. If any foundations penetrate the CAP the footing thickness shall have a minimum thickness of 6 inches and the footing will become a part of the CAP with respect to future maintenance of the CAP. The footing excavation must be backfilled with clean soil or other materials that meet the requirements of 40 CFR 761.61(b)(1)(ii) through (b)(1)(v) and compacted to a minimum of 95 percent of the standard proctor density.

Article VII

Miscellaneous

7.1 No Dedication Intended.

Nothing set forth herein shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Excavation Sensitive Area or any portion thereof to the general public for any purposes whatsoever.

7.2 Notices.

Whenever any person gives or serves any notice, demand, or other communication with respect to this Covenant, each such notice, demand, or other communication shall be in writing and shall be deemed effective 1) when delivered , if personally delivered to the person being served or to an officer of a corporate party being served or official of a government agency being served , or 2) three business days after deposit in the mail if mailed by United States mail, postage paid certified, return receipt requested:

To "Covenanter"

Name

Address

City, State

Attention:

"EPA"

Name

Address

City, State

Attention:

7.3 Partial Invalidity.

If any portion of the Restrictions or terms set forth herein is determined to be invalid for any reason, the remaining portions shall remain in full force and effect as if such portion had not been included.

7.4 Article Headings.

Headings at the beginning of each numbered article of the Covenant are solely for the convenience of the parties and are not a part of this Covenant.

7.5 Recordation.

This instrument shall be executed by Covenanter and by the EPA Region IX administrator. This instrument shall be recorded by the Covenanter in the County of Maricopa within 10 days after the date of execution.

IN WITNESS WHEREOF, the parties execute this Covenant as of the date set forth above.

Client an Arizona Corporation

By: _____

Title: _____

Date: _____

EPA

By: _____

Title: _____

Date: _____

STATE OF ARIZONA

COUNTY OF _____

On _____, 2010 before me, a Notary Public in and for the State of Arizona, personally appeared _____, personally known to me or provided to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Notary Signature

STATE OF ARIZONA

COUNTY OF _____

On _____, 2010 before me, a Notary Public in and for the State of Arizona, personally appeared _____, personally known to me or provided to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Notary Signature

EXHIBIT A – LEGAL DESCRIPTION OF THE PROPERTY

EXHIBIT B – LEGAL DESCRIPTION OF THE EXCAVATION SENSITIVE AREA